

From: Jeff Clearwater
To: Microsoft ATR
Date: 1/28/02 10:22pm
Subject: Microsoft Settlement

Your Honor, Colleen Kollar-Kotelly,

Please do what you can to stop this juggernaut from doing more damage to an already over monopolized industry!

I agree totally with the filing by ProComp regarding the Microsoft "settlement". This is a travesty of justice. Microsoft clearly has grossly violated antitrust legislation and has monopolized the market in ways that clearly suppresses innovation and competition in the operating system, browser, and scripting software industries.

The filing by Procom says it the best. I reproduce an article with the specifics below.

"This proposed decree is so ineffective that it would not have prevented Microsoft from destroying Netscape and Java, the very acts that gave rise to this lawsuit," said Judge Robert H. Bork. "It is so ineffective in controlling Microsoft that it might as well have been written by Microsoft itself."

The ProComp filing explained that Judge Kollar-Kotelly must make a truly independent determination of whether the proposed settlement is in the public interest, with the public interest standard defined by the Court of Appeals ruling in this case.

Sincerely,

Jeff Clearwater

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Reference Article:

Judge Bork and Judge Kenneth W. Starr were among those signing a Tunney Act filing on the settlement submitted today by the Project to Promote Competition and Innovation in the Digital Age (ProComp), a leading opponent of the settlement.

The ProComp filing also included an affidavit critical of the proposed settlement from Nobel Prize-winning economist Kenneth J. Arrow, a professor at Stanford University, who had supported the 1995 consent decree between the federal government and Microsoft.

The ProComp filing explained that Judge Kollar-Kotelly must make a truly independent determination of whether the proposed settlement is in the public interest, with the public interest standard defined by

the Court of Appeals ruling in this case.

"Because this proposed settlement does not follow the mandates of the Court of Appeals judgment, it must be rejected. Neither the Department of Justice or the District Court have the constitutional authority that does not satisfy the Court of Appeals ruling," Starr explained. "This proposed settlement not only fails to meet the Court of Appeals standard, it doesn't even purport to do so. It is simply based on an inappropriate legal standard, and we don't believe it satisfies even this modest standard."

In his affidavit, Professor Arrow said the new proposed settlement between Microsoft and the Department of Justice fails to eliminate the benefits to Microsoft of its illegal conduct, fails to restore competition in the market, and fails to strengthen the possibilities of competition and deter the exercise of monopoly power now and in the future.

Arrow noted that the Court of Appeals ruled that Microsoft violated federal antitrust law by impermissibly maintaining its monopoly through anticompetitive actions against Netscape and Java.

"Given that finding, the remedies in this case should eliminate the benefits to Microsoft of its illegal conduct; should restore, if possible, the possibility of competition in operating systems; and should not allow Microsoft to protect its illegally maintained monopoly from current and future competition in related markets, such as server operating systems and Web services," Arrow said in his affidavit. "In my opinion, the PFJ (proposed final judgment) fails to accomplish these objectives."

Arrow said the market position that Microsoft has today - with 92 percent of the PC operating systems market and 91 percent of the browser market - "makes it difficult for any set of conduct remedies to lead to significant middleware competition. Neither the PFJ nor any other set of conduct remedies can re-create the technological disruption or competitive head start that existed before Microsoft acted illegally."

ProComp's Tunney Act filing also notes that the proposed settlement fails to adequately deal with competitive issues that will determine the future of the software industry, and does not contain the safeguards needed to prevent Microsoft from extending its monopoly into more markets.

"The proposed decree hardly deals at all with Microsoft's likely future anticompetitive conduct. Microsoft's prodigious market power is now directed at the next threat to the Windows platform - applications and services provided via the Internet and other networks - not the Netscape/Java threat of 1995-99," according to the ProComp filing, which was signed by Bork, Starr, ProComp President Mike Pettit and others. "Microsoft has destroyed those revolutionary technologies that are a source of operating systems competition and has moved on to other areas that the proposed decree all but ignores." The ProComp Tunney Act filing notes that the proposed settlement's

strong-sounding provisions are often undercut by other sections that give Microsoft broad discretion in interpreting the agreement. For example, the proposed settlement permits Microsoft to design and bundle its products in different ways to evade the disclosure requirements by giving Microsoft "sole discretion" to decide what software is part of a "Windows Operating System Product."

"The API disclosure provisions are riddled with numerous deficiencies that render them ineffective in promoting competition," the ProComp filing said. "These are not loopholes, but triumphal arches that allow Microsoft to proceed uninhibited by the antitrust laws."

Judges Bork and Starr and the others supporting the ProComp filing urged Judge Kollar-Kotelly to defer a decision on the proposed decree until after the hearing on the stronger remedies proposed by the nine states which have objected to the proposed settlement.

"The proposed decree supported by Microsoft and the Department of Justice is hopelessly vague and inherently unenforceable," Starr said. "We believe that divestiture remains the preferable and most effective remedy for Microsoft's antitrust violations."

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